

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**KENNETH MARSHALL,**

**Petitioner,**

**v.**

**WARDEN, PICKAWAY  
CORRECTIONAL INSTITUTION,**

**Respondent.**

**CASE NO. 2:14-CV-812**

**JUDGE GREGORY L. FROST**

**Magistrate Judge Elizabeth P. Deavers**

**OPINION AND ORDER**

On April 27, 2015, the Magistrate Judge issued an *Order and Report and Recommendation* recommending that Petitioner's *Motion for Summary Judgment* and evidentiary hearing (ECF No. 9) be denied. The Magistrate Judge denied Petitioner's *Motion to Appeal*, ECF 16, and granted Petitioner's *Motion for Free Copies*, (ECF No. 18), directing Respondent to submit a copy of the transcript of Petitioner's guilty plea and sentencing hearing within thirty days. *Order and Report and Recommendation*, (ECF No. 19). Petitioner has filed *Objections*, (ECF No. 22), to the Magistrate Judge's *Order and Report and Recommendation*.

Petitioner maintains that he timely appealed his judgment of conviction based on his request for appointed counsel to represent him on appeal and the subsequent denial of this request. Petitioner asserts that he was denied his right to appellate review and the effective assistance of counsel. He raises a claim of the denial of counsel, and refers to his efforts to obtain the assistance of counsel for the filing of an appeal, as cause for any procedural default. He complains that the trial court has yet to rule on, or grant, his August 2014, motion for judicial release. He contends that he filed a timely appeal with the Ohio Supreme Court. He requests immediate release.

All of the issues to which Petitioner refers involve material disputed facts and application of law that will be resolved upon consideration of the merits of this case. The Court will not address these issues now in the context of Petitioner's Motion for Summary Judgment, because to do so would be inappropriate at this juncture, but instead will resolve them when it addresses the merits of Petitioner's claims. Further, it does not now appear that an evidentiary hearing will be required for such determination. Therefore, Petitioner's *Motion for Summary Judgment* (ECF No. 9) is **DENIED**.

Petitioner's does not appear to object to the denial of his *Motion to Appeal*, ECF 16. To the extent that he may have intended to do so, he has provided no basis for the filing of an interlocutory appeal.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the foregoing reasons, and for the reasons detailed by the Magistrate Judge, Petitioner's *Objection*, (ECF No. 22) is **OVERRULED**. The *Order and Report and Recommendation* (ECF No. 19) is **ADOPTED** and **AFFIRMED**. Petitioner's *Motion for Summary Judgment* and request for an evidentiary hearing (ECF No. 9) is **DENIED**. The *Motion to Appeal* (ECF No. 16) also is **DENIED**.

Respondent is reminded of the Magistrate Judge's Order directing him to file a copy of the transcript of Petitioner's guilty plea and sentencing hearings with the Court, and to serve a copy on Petitioner by May 27, 2015.

**IT IS SO ORDERED.**

/s/ GREGORY L. FROST  
GREGORY L. FROST  
United States District Judge